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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**

11 **SAN JOSE POLICE OFFICERS'**
12 **ASSOCIATION,**

13 **Plaintiff,**

14 **v.**

15 **CITY OF SAN JOSE, BOARD OF**
16 **ADMINISTRATION FOR POLICE**
17 **AND FIRE DEPARTMENT**
18 **RETIREMENT PLAN OF CITY OF**
19 **SAN JOSE, and DOES 1-10, inclusive,**

20 **Defendants.**

No. 1-12-CV-225926
(and Consolidated Actions
1-12-CV-225928, 1-12-CV-226570,
1-12-CV-226574, 1-12-CV-227864,
and 1-12-CV-233660)

PLAINTIFF SAN JOSE POLICE OFFICERS'
ASSOCIATION'S OBJECTIONS TO
DECLARATION OF ALEX GURZA

Date: June 7, 2013
Time: 9:00 a.m.
Place: Dept. 2
Judge: Hon. Patricia M. Lucas

Complaint Filed: June 6, 2012
Trial Date: July 22, 2013

21 **AND RELATED CROSS-COMPLAINT**
22 **AND CONSOLIDATED ACTIONS.**

**OBJECTIONS TO THE DECLARATION OF ALEX GURZA IN SUPPORT OF
DEFENDANTS' AND CROSS-COMPLAINANT'S MOTION FOR SUMMARY ADJUDICATION**


Material Objected to:	Grounds for Objection:
<p>1. SJPOA objects to material contained in Gurza Decl. ¶¶ 24 and 27, which in their entirety read as follows.</p> <p>Paragraph 24 states: "During fiscal year 2010-2011, the following six unions agreed that their members would pay additional employee pension contributions, both ongoing and one-time, as well as a one-time base pay reduction, equivalent to approximately 10% of total compensation, except the POA agreed that its members would pay 5.25% in additional employee pension contributions on a one-time basis. The additional contributions and pay reductions were to be used to defray pension plan unfunded liabilities." Gurza then lists six unions, including SJPOA.</p> <p>Paragraph 27 asserts: "The union agreements to pay additional employee pension contributions contained substantially similar provisions. For example, the 2010-2011 MOA between the City and the Association of Engineers and Architects (AEA Unit 43), of which plaintiff Mukhar is the president, states at Section 10.1.1:</p> <p>'On-Going Additional Retirement Contributions. Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to <u>reduce the contributions that the City would otherwise be required to make for the pension unfunded liability</u>, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. <u>The intent of this</u></p>	<p>1. Lacks foundation, conclusory, and more prejudicial than probative. (Evid. Code §§ 352, 403.)</p> <p>Gurza asserts at ¶ 24 that SJPOA agreed in its 2010-2011 MOA that its members "would pay additional employee pension contributions, both <i>ongoing and one-time...</i>" (emphasis added) and states at ¶ 27 that "the 2010-2011 MOA between the City and the Association of Engineers and Architects (AEA Unit 43)" was "substantially similar" to the MOA between SJPOA and the City. Further, Gurza asserts employee contributions were "used to defray pension plan [UAL]."</p> <p>Lacks Foundation and conclusory:</p> <p>There is no foundation for these statements.</p> <p>First, SJPOA <i>never</i> agreed to ongoing additional employee pension contributions and AEA's MOA is materially different than SJPOA's MOA. Unlike AEA's MOA—which contains AEA's agreement to make "On-Going Additional Retirement Contributions" in addition to an additional one-time contribution—SJPOA's MOA contains <i>only</i> a provision for a "one-time" additional retirement contribution. There are <u><i>no facts</i></u> supporting Gurza's statement that SJPOA agreed its members would make any "on-going" additional contributions. (Vado Decl. ¶¶ 8-10; Robb Decl. ¶¶ 16-18; Robb Ex. F; Gurza Ex. 29 [SJPOA MOA Article 5.1: "One-Time Additional Retirement Contribution"]; Gurza Ex. 30 [subsequent MOA deleting provision for increased contributions]).</p> <p>Second, SJPOA did <i>not</i> agree its members would pay UAAL. The undisputed evidence is that Police Officers did <i>not</i> pay any UAAL and that their additional</p>

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<p>1 <u>additional retirement contribution by</u></p> <p>2 <u>employees is to reduce the City's required</u></p> <p>3 <u>pension retirement contribution rate by a</u></p> <p>4 <u>commensurate 7.30% of pensionable</u></p> <p>5 <u>compensation, as illustrated below . . .</u> :</p> <p>6 [Emphasis added] In addition, the union</p> <p>7 agreed to an additional one-time additional</p> <p>8 pension contribution 'in the amount of</p> <p>9 3.53% of pensionable compensation, and</p> <p>10 the amounts so contributed will be applied</p> <p>11 to reduce the contributions that the City</p> <p>12 would otherwise be required to make during</p> <p>13 that time period for the pension unfunded</p> <p>14 liability....' (Section 10.1.2) [Emphasis</p> <p>15 added]"</p>	<p>contributions were paid directly to their</p> <p>individual retirement accounts. (Vado</p> <p>Decl. ¶ 11; Robb Decl. ¶ 16, 19-20; Robb</p> <p>Ex. F; Gurza Ex. 29 [SJPOA MOA</p> <p>Article 5.1 ["the amounts so contributed</p> <p>will be applied to reduce the contributions</p> <p>that <i>the City</i> would otherwise be required</p> <p>to make for [UAAL]"; "the intent of this</p> <p>additional ... contribution ... is to reduce</p> <p><i>the City's</i> required pension contribution</p> <p>rate"] [emphases added].)</p> <p>More prejudicial than probative:</p> <p>Even if there were foundation for Gurza's</p> <p>statements, they are more prejudicial than</p> <p>probative because they wrongly use</p> <p>evidence that <i>other</i> unions agreed to pay</p> <p>on-going contributions to establish that</p> <p>SJPOA did so, when the true facts</p> <p>establish it did not. (Vado Decl. ¶ 11;</p> <p>Robb Decl. ¶ 16, 19-20; Robb Ex. F;</p> <p>Gurza Ex. 29, 30).</p>
<p>16 2. SJPOA objects to material in Gurza</p> <p>17 Decl. ¶ 31.</p> <p>18 In its entirety, Paragraph 31 reads as</p> <p>19 follows. "During negotiations over</p> <p>20 compensation, the City and its employee</p> <p>21 unions have treated increased employee</p> <p>22 contribution rates as interchangeable</p> <p>23 with wage decreases. Both are elements</p> <p>24 that reduce "Total Compensation," which is</p> <p>25 the total cost to the City of pay and benefits,</p> <p>26 including base pay, retirement</p> <p>27 contributions, health insurance, and other</p> <p>28 benefits. Increased employee pension</p> <p>contributions have some advantages over</p> <p>wages for employees. The deductions are</p> <p>made pre-tax and are credited to the</p> <p>employee's retirement account, which</p> <p>means that if the employee leaves</p> <p>employment with the City, the employee</p> <p>has the option of taking the balance of the</p> <p>retirement account. During the later</p> <p>negotiations, the City received an e-mail</p> <p>from a union representative making these</p> <p>points. A true and correct copy is attached</p> <p>as Exhibit 35." (emphasis added.)</p>	<p>2. Paragraph 31 lacks foundation, is</p> <p>conclusory, and more prejudicial than</p> <p>probative. (Evid. Code §§ 352, 403.)</p> <p>Gurza asserts that all unions, including</p> <p>SJPOA, "have treated increased employee</p> <p>contribution rates as interchangeable with</p> <p>wage decreases," but cites no supporting</p> <p>evidence that is true as to SJPOA.</p> <p>Further, the only "evidence" cited is an e-</p> <p>mail from IFPTE's bargaining</p> <p>representative, but Gurza does not</p> <p>establish that union is authorized to speak</p> <p>for SJPOA nor does the underlying</p> <p>exhibit.</p> <p>Additionally, ¶ 31 undermines Gurza's</p> <p>assertion that "contribution rates [are]</p> <p>interchangeable with wage decreases"</p> <p>because it outlines how the two are <i>not</i></p> <p>"interchangeable," i.e., "[i]ncreased</p> <p>employee pension contributions have</p> <p>some advantages over wages for</p> <p>employees. The deductions are made pre-</p> <p>tax and are credited to the employee's</p> <p>retirement account, which means that if</p> <p>the employee leaves employment with the</p> <p>City, the employee has the option of</p>

Material Objected to:	Grounds for Objection:
	<p>taking the balance of the retirement account.”</p> <p>More prejudicial than probative:</p> <p>Even if there were foundation for Gurza’s statements, they are more prejudicial than probative because they wrongly use evidence that <i>other</i> unions may have agreed that “contribution rates [are] interchangeable with wage decreases” to establish that SJPOA did so, when the true facts establish it did not. (Vado Decl. ¶¶ 7-11; Robb Decl. ¶ 18.).</p>
<p>3. SJPOA objects to material in Gurza Decl. ¶ 49.</p> <p>In its entirety, Paragraph 49 reads as follows. “Beginning in 2009, the retirement funds began to experience significant increases in unfunded liabilities. The large unfunded liabilities resulted in an anomaly. Although the retirement systems had large unfunded liabilities, they earned enough in a particular year to have ‘excess earnings’ for the year — as defined in the Municipal Code — to fund the SRBR. And under the resolutions that established the methods for distribution to retirees, the SRBR in turn had sufficient funds to make supplemental distributions to retirees.”</p>	<p>3. Paragraph 49 lacks foundation, is speculative and conclusory, and is an inadmissible opinion of a lay witness. (Evid. Code §§ 403, 702, 800, 802-803.)</p> <p>Without laying any factual foundation and without qualifying as an expert, Gurza makes speculative and conclusory opinion statements regarding the pension plans’ unfunded liabilities, including his unsupported and speculative opinion there were “significant increases” and “large unfunded liabilities.” Gurza does so without defining these terms, the relative amounts of any liabilities or increases thereto, let alone the source of his information for his statements.</p>

Dated: May 3, 2013

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